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Attorney General Joseph R. Biden, III, State Senator Karen Peterson, State Representative John Kowalko, and State Representative Bryon Short announce the introduction of legislation to strengthen Delaware's Freedom of Information Act

Wilmington, DE – Today Attorney General Joseph R. Biden, III joined State Senator Karen Peterson (D-Stanton), State Representative Bryon Short (D-Brandywine Hundred), and State Representative John Kowalko (D-Newark) in announcing legislation that positions the Department of Justice to represent the people in Freedom of Information Act (FOIA) matters.

“The Department of Justice should stand squarely on the side of the public from the outset and should serve the people when their access to public information is inappropriately restricted,” Attorney General Biden said. “This legislation aims to place the Department of Justice where I believe it belongs: on the side of the people.”

Under Delaware's Freedom of Information Act, any person has the right to request public information from any state or local government body. However, under current law, the role of the Department of Justice in investigating and enforcing alleged violations of the Act depends on whether a local government or state government is the subject of a FOIA request.

When a local government body refuses to provide requested information, the petitioner may ask the Department of Justice to determine whether that body violated FOIA in its refusal. The Department of Justice may conduct an investigation, issue a written FOIA Opinion stating its conclusions in the matter, and may even file a lawsuit on the petitioner's behalf to compel the release of the requested information.

However, by statute the Department of Justice is the legal counsel for all Delaware state agencies. As their counsel, the Department represents each agency in court proceedings, including FOIA lawsuits challenging their refusal to provide information. Moreover, the Department is precluded by statute from enforcing the provisions of FOIA with respect to state agencies. As such, it cannot formally investigate alleged FOIA violations against state agencies or file suit to compel their release of requested information.

The legislation introduced today strengthens Delaware's Freedom of Information Act in two major ways. First, the bill provides for equal process governing FOIA requests. Second, the bill enumerates specific petitioner rights under Delaware's FOIA law.

The bill creates a level playing field for petitioners with FOIA requests against either state agencies or local government bodies.

“The Department of Justice should be empowered to provide the same FOIA review and enforcement authority in matters involving state agencies that it already has with local governing bodies,” noted Attorney General Biden. “With this legislation, all FOIA cases across Delaware involving public bodies on the state and local levels would be reviewed and enforced in a similar fashion.”

The bill also spells out specific petitioner rights by:

- Clarifying the FOIA statute so that the purpose for which information is sought is irrelevant.
- Requiring that reasonable efforts be taken to provide access to records as promptly as possible.
- Clarifying that public bodies must prepare meeting minutes in a timely fashion, either within 30 days after a meeting or before the next meeting, whichever occurs first.
- Stating that information deemed open be made available to all people.
- Ensuring that public bodies make reasonable efforts to accommodate large numbers of people at meetings where matters of significant public interest are addressed.

“This is a huge step forward for people who are trying to get information from state agencies,” Senator Peterson stated. “This legislation is a straightforward and common-sense solution to an otherwise contradictory legal process.”

While the legislation states that the Department of Justice will not represent state agencies in FOIA-related matters, the Department will continue to represent them in all other matters. Deputy Attorneys General who work on matters involving FOIA requests will be effectively walled off from the Deputy Attorneys General who serve as counsel to state agencies.

"The FOIA statute should lay out a clear, defined and consistent process for those seeking information across all levels of state and local government," Representative Kowalko said. "This bill goes a long way to meeting that stated goal."

"By enumerating additional rights the public has to government information this legislation brings us closer to the spirit and true intent of open government," stated Representative Short.

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